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*Counsel for Plaintiffs*

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEVADA

3  
4 DAVID RIKER, ROGER LIBBY, TERRENCE BROTHERS, )  
JEFFREY HOSMER, MARK WHITTINGTON )  
5 on their own behalf and on behalf of )  
6 those similarly situated, )

) 3:08-CV-115-LRH-VPC

7 )  
8 Plaintiffs, )

9 v. )

10 )  
11 JAMES GIBBONS, Governor of Nevada; ROSS MILLER, )  
12 Secretary of State of Nevada; CATHERINE CORTEZ MASTO, )  
13 Attorney General of Nevada; HOWARD SKOLNIK, Director, )  
14 Nevada Department of Corrections; ROBERT BANNISTER, )  
15 Medical Director, Nevada Department of Corrections; and )  
E. K. MCDANIEL, Warden, Ely State Prison. )

16 Defendants. )  
17 )

18 AMENDED CLASS ACTION COMPLAINT  
19 FOR DECLARATORY AND INJUNCTIVE RELIEF

20 INTRODUCTION

21  
22 1. The Plaintiffs are prisoners confined in Ely State Prison (ESP), a maximum security prison  
23 in Ely, Nevada, housing 1,000 men, including death row prisoners. Plaintiffs bring this class action  
24 Complaint on their own behalf and on behalf of those similarly situated, seeking relief from  
25 deprivations of medical care at ESP. These deprivations are so extreme that they subject all the men  
26 confined there to constant significant risk of serious injury, medical harm, and premature death, and  
27  
28

1 to the needless infliction of great physical pain and suffering.

2 2. Defendants' actions, detailed herein, deny basic human needs, inflict unnecessary and  
3  
4 wanton pain and suffering, and put Plaintiffs and the class at substantial risk of physical injury,  
5 illness, and premature death, all in violation of Plaintiffs' rights under the Eighth and Fourteenth  
6 Amendments to the United States Constitution. Plaintiffs seek injunctive and declaratory relief to  
7  
8 remedy these ongoing violation of rights for themselves as well as for a class of those similarly  
9 situated.

### 10 JURISDICTION AND VENUE

11  
12 3. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law  
13 of rights, privileges and immunities secured by the Constitution of the United States. The rights  
14 sought to be redressed are guaranteed by the Eighth and Fourteenth Amendments to the United States  
15 Constitution. The Court has federal question jurisdiction over this controversy under 28 U.S.C. §§  
16 1331 and 1343.

17  
18 4. Venue is proper in the District of Nevada under 28 U.S.C. § 1391. The Plaintiffs are  
19 incarcerated there, the acts complained of occurred there, and the Defendants work there.

### 21 PARTIES

#### 22 Plaintiffs

23  
24 5. Plaintiff David Riker is a prisoner in the custody of the Nevada Department of Corrections  
25 who is currently incarcerated in Ely State Prison.

26 6. Plaintiff Roger Libby is a prisoner in the custody of the Nevada Department of Corrections  
27 who is currently incarcerated in Ely State Prison.  
28

1 7. Plaintiff Terrence Brothers is a prisoner in the custody of the Nevada Department of  
2 Corrections who is currently incarcerated in Ely State Prison.

3  
4 8. Plaintiff Jeffrey Hosmer is a prisoner in the custody of the Nevada Department of  
5 Corrections who is currently incarcerated in Ely State Prison.

6  
7 9. Plaintiff Mark Whittington is a prisoner in the custody of the Nevada Department of  
8 Corrections who is currently incarcerated in Ely State Prison.

9 **Defendants**

10 10. Defendant Jim Gibbons is the Governor of the State of Nevada. As Governor, Gibbons is  
11 the President of the Board of State Prison Commissioners (the "Board"), the state governmental body  
12 responsible for oversight of all prisons in Nevada. As part of its oversight duties, the Board receives  
13 semiannual reports from the State Health Officer on correctional facilities' compliance with the  
14 medical services standards established under Nevada statute. Defendant Gibbons is sued in his  
15 official capacity.

16  
17 11. Defendant Ross Miller is the Secretary of State of Nevada. As Secretary of State, Miller is  
18 the Secretary of the Board of State Prison Commissioners, the state governmental body responsible  
19 for oversight of all prisons in Nevada. Defendant Miller is sued in his official capacity.

20  
21 12. Defendant Catherine Cortez Masto is the Attorney General of the State of Nevada. As  
22 Attorney General, Cortez Masto is a member of the Board of State Prison Commissioners.  
23 Defendant Cortez Masto is sued in her official capacity.

24  
25 13. Defendant Howard Skolnik is the Director of the Nevada Department of Corrections  
26  
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28

1 (NDOC). As Director, Skolnik is responsible for NDOC's daily functioning and administration.

2 Under Nevada law, the Director of NDOC is also responsible for establishing standards for medical  
3 services in prisons with the approval of the Board. Defendant Skolnik is sued in his official capacity.  
4

5 14. Defendant Robert Bannister, M.D. is the Medical Director for NDOC. As Medical Director,  
6 Bannister is responsible for the administration and provision of medical care services to individuals  
7 in NDOC's custody. Dr. Bannister's duties include ensuring the quality and adequacy of medical  
8 care services provided to prisoners at ESP. He is sued in his official capacity.  
9

10 15. Defendant E. K. McDaniel is the Warden of ESP. As Warden, McDaniel is responsible for  
11 the daily functioning and administration of ESP, including the safe, secure and humane treatment  
12 of all prisoners incarcerated there. He is sued in his official capacity.  
13

#### 14 **FACTUAL ALLEGATIONS**

##### 15 **I. Defendants Fail to Treat Prisoners' Serious Medical Needs Causing Significant** 16 **Injury and Unnecessary and Wanton Infliction of Pain.** 17

18 16. ESP is a maximum security prison in Ely, Nevada designed to house over 1,000 men,  
19 including death row.

20 17. ESP lacks the most basic elements of an adequate prison health care system, including: a  
21 system of ready access to adequate medical care; a medical staff competent to examine prisoners  
22 and diagnose illnesses; a system of adequate, accurate, and up-to-date medical record-keeping; a  
23 prison health care system able to treat medical problems or to refer prisoners to others who can,  
24 including reasonably speedy referrals and access to other physicians within the prison, or to  
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1 physicians or facilities outside the prison; and an adequate system for responding to emergencies,  
2 including adequate facilities and staff to handle emergencies within the prison.

3  
4 18. Every man incarcerated at ESP is subject to the following policies and practices which  
5 subject all of them to a significant risk of injury and unnecessary and wanton infliction of pain:

- 6 • Defendants' policy and practice of refusing to provide necessary medical care for  
7 serious medical needs, including injuries that a reasonable doctor or patient would  
8 find important and worthy of comment or treatment; medical conditions that  
9 significantly affect prisoners' daily activities; and medical conditions involving  
10 chronic or substantial pain;
- 11 • Defendants' policy and practice of failing to maintain an adequate system to  
12 provide prescription medication refills and to ensure continuity of treatment;
- 13 • Defendants' policy and practice of failing to make timely referrals for specialty  
14 care;
- 15 • Defendants' policy and practice of failing to keep professionally adequate,  
16 accurate and up-to-date medical records;
- 17 • Defendants' policy and practice of failing to monitor prisoners with chronic  
18 conditions adequately;
- 19 • Defendants' policy and practice of refusing to treat chronic pain; and
- 20 • Defendants' failure to ensure adequate coverage by a qualified physician at ESP.

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26 19. This pervasive pattern of grossly inadequate medical care and the lack of basic elements  
27 of an adequate medical care system creates a substantial risk of serious medical harm for every  
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1 prisoner incarcerated at ESP, and in fact causes actual harm to them. All prisoners at ESP are  
2 subject to the same medical system, the same practices and policies, and the same systematic  
3 denial of care.  
4

5 20. The grossly inadequate medical care at ESP deprives the Plaintiffs and all prisoners at  
6 ESP of the minimal civilized measure of life's necessities.  
7

8 **II. Defendants Are Aware of and Have Deliberately Failed to Take Adequate Action to**  
9 **End Medical Abuse at Ely State Prison.**

10 21. In the spring of 2006 the Legislative Commission's Subcommittee to Study Sentencing  
11 and Pardons, Parole and Probation heard testimony from a number of Nevada citizens regarding  
12 grossly inadequate medical care for seriously ill prisoners, in particular at ESP. As a result of  
13 this hearing, on October 6, 2006, the Subcommittee sent a formal request to the Governor's  
14 Office to have the Executive Branch carry out an evaluation of the adequacy of inmate access to  
15 medical care in Nevada.  
16

17  
18 22. The Governor's Office took no action on the Legislature's request.

19 23. The Board of State Prison Commissioners, whose membership is comprised of  
20 Defendants Gibbons, Miller and Cortez Masto, has either failed to require semiannual reporting  
21 on the provision of medical services in state correctional facilities or failed to review and take  
22 action on such reports. The Board's dereliction of duty in this matter has directly contributed to  
23 the current state of medical abuse at ESP.  
24

25  
26 24. In May 2007, the American Civil Liberties Union (ACLU) informed Defendant Skolnik  
27 of the grave medical situation at ESP and the need for immediate intervention.  
28

1 25. The ACLU retained a qualified medical expert, Dr. William K. Noel of Boise, Idaho, to  
2 review prisoner medical records at ESP. Dr. Noel reviewed the medical records of the thirty-five  
3  
4 ESP prisoners that Defendant Skolnik made available for his review.

5 26. Dr. Noel prepared a report ("the Noel Report"), which was promptly provided to  
6 Defendant Skolnik and Defendant Bannister, detailing his findings in particular cases and a  
7  
8 summary of his conclusions as to the status of the health care being provided to prisoners at Ely.

9 27. The Noel Report found overwhelming evidence that the grossest possible systemic  
10 medical abuses at ESP are occurring and have been occurring there for years. Dr. Noel's review  
11  
12 of the records found that not only are prisoners at ESP in imminent danger of death or grave  
13 irreparable medical injury, but that they are being callously and wantonly subjected to needless  
14 physical agony inflicted by grossly improper medical treatment. Moreover, the medical records  
15  
16 themselves were so poorly and unprofessionally maintained that he found the charting practices  
17 alone constitute a danger to prisoners at ESP. The Noel Report also found that at least one man  
18  
19 has already died an unnecessary, slow and agonizing death and that in all likelihood there will be  
20 more such deaths and unnecessary suffering if immediate systemic changes are not made in the  
21 provision of health care at ESP.

22 28. Among the cases Dr. Noel reviewed is that of Patrick Cavanaugh, who was an insulin  
23  
24 dependent diabetic. He lived in the ESP infirmary for at least two years before his agonizing  
25 death on April 10, 2006.

26 29. Mr. Cavanaugh's cause of death was complications of Diabetes Mellitus, peripheral  
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1 gangrene of both lower extremities, hypertension, and congestive heart failure -- all untreated. In  
2 the best of circumstances (hospitalization, quick antibiotics, and early detection) gangrene has a  
3 30% mortality rate, but untreated, it is essentially 100% fatal. Mr. Cavanaugh received almost no  
4 treatment for his illnesses, so his slow, painful death in the ESP infirmary was virtually assured.  
5 Given the profound and unmistakable smell of putrefying flesh, there can be no question that  
6 every medical provider and correctional officer in that infirmary was acutely aware of Patrick  
7 Cavanaugh's condition.  
8

10 30. Although Mr. Cavanaugh was an insulin-dependent diabetic, there is an order in his chart  
11 stopping all his medications, including his insulin three years before his death. The medical  
12 order is unsigned and there is no indication as to why this was done. Insulin was ordered  
13 sporadically thereafter but for the next three years until his death was never given.  
14

16 31. There is no indication that consideration was ever given to surgically removing the  
17 gangrenous limbs. This procedure could have saved Mr. Cavanaugh's life. Instead, ESP medical  
18 staff left him to literally rot to death.  
19

20 32. The records suggest that Mr. Cavanaugh "would not let" people come into his cell and  
21 that he started refusing all medications except for aspirin. Even though progress notes in his  
22 chart detail increasing paranoia and probable dementia, and even though gangrene is known to  
23 derange the mind, there was no order to force life-sustaining medications.  
24

25 33. Although a signed and notarized full, non-limited Power of Attorney Authorization  
26 giving power to a guardian is present in his chart, there is no indication that Defendant McDaniel  
27 or any other prison official ever contacted Mr. Cavanaugh's guardian to advise her of Mr.  
28

1 Cavanaugh's medical condition and the need to administer medications without his consent  
2 because of his incapacity, due to his dementia, to make medical decisions for himself.  
3

4 34. Even during his last days before death, where an order is given for 5 mgs. of morphine  
5 sulfate every 4 to 5 hours to alleviate his terrible pain and suffering, there is no evidence that this  
6 order was ever carried out. Patrick Cavanaugh was left to die in prolonged agony and to suffer  
7 without palliative care.  
8

9 35. The Noel Report also analyzed the case of Greg Leonard, who suffers from HIV, diabetes  
10 mellitus, hypertension, two spinal injuries and a botched back surgery resulting in chronic,  
11 debilitating pain, and kidney disease. Although Mr. Leonard suffers severe and chronic pain, he  
12 receives almost no treatment for that pain. He is also an insulin-dependent diabetic who needs  
13 daily sugar tests, but he has not received regular sugar checks since 2003. Moreover, when ESP  
14 medical placed Mr. Leonard on insulin on April 2, 2003, he was left on metformin (oral agent to  
15 lower blood sugar) even though the metformin can cause ketoacidosis in insulin-dependent  
16 diabetics.  
17  
18  
19

20 36. Like most ESP medical records, Mr. Leonard's chart is frequently illegible. Vital signs  
21 are rarely taken or recorded. Like many ESP prisoners, Mr. Leonard also experienced major  
22 problems with his multiple medications at ESP. He only received his HIV medications  
23 sporadically which undermines their efficacy—and puts him at great risk for resistance to entire  
24 classes of HIV medications—thereby dangerously limiting treatment options. In addition,  
25 although Mr. Leonard's health requires tight control of his blood pressure, his prescriptions are  
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1 rarely refilled in a timely manner and he consistently runs out of his medications despite his  
2 vigilant efforts to obtain refills without a lapse.

3  
4 37. The Noel Report noted that it is astonishing that Mr. Leonard is still alive, given the  
5 grossly inadequate medical treatment revealed in his records.

6  
7 38. The Noel Report further examined the case of John Snow, an ESP prisoner who has  
8 severe degenerative hip disease and requires surgery. An orthopedist recommended hip surgery  
9 for Mr. Snow years ago but this procedure was denied as "not life-threatening." If he is not given  
10 surgery, Mr. Snow's bones will eventually wear through his acetabulae, which are the large  
11 sockets at the base of the hip bones into which the head of the femur fits. Because of Mr. Snow's  
12 condition, he is in constant, excruciating pain but he is given no pain medications. There is no  
13 medically justifiable reason for leaving this man in agony.

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15  
16 39. The Noel Report also reviewed the case of Michael Mulder, who suffered a stroke in  
17 prison. He now suffers paralysis of his right side. His medical records indicate that Mr. Mulder  
18 had the stroke on March 15, 2001 but he was not transferred to the infirmary in ESP until March  
19 31, 2001. There is no indication in the medical records that he received any acute treatment for  
20 his stroke.

21  
22  
23 40. Dr. Noel further reviewed Michael Mulder's case with Defendant Bannister and met  
24 with the patient during his visit to ESP. Mr. Mulder was obviously severely disabled by his  
25 stroke and he has been given absolutely no physical therapy to repair that damage. His right side  
26 is extremely impaired and he has difficulty walking and talking. His right arm, hand and fingers  
27 are also hideously contorted in an agonizing position that will only grow worse without  
28

1 treatment. The medical term for this disabling process is contracture. A simple brace could have  
2 prevented the contracture that has already occurred. Without intervention Mr. Mulder's arm may  
3 contract until it rips itself from its own socket and his hand could bend in upon itself until the  
4 wrist breaks.  
5

6 41. Another case reviewed in the Noel Report is that of Robert Ybarra. Mr. Ybarra suffers  
7 from deep vein thrombosis (DVT) and chronic, non-healing venous stasis ulcers on both lower  
8 legs and ankles. DVT is extremely painful and Ybarra suffers severe and chronic pain that is not  
9 treated. Mr. Ybarra's chronic leg ulcers could be easily cured, but instead, Defendants have  
10 allowed his open, draining, painful wounds to remain untreated for years. Without adequate  
11 treatment, he will lose his feet and legs.  
12  
13

14 42. Dr. Noel emphasized in his report that the ESP records "show a system that is so  
15 broken and dysfunctional that, in my opinion, every one of the prisoners at Ely State Prison who  
16 has serious medical needs, or who may develop serious medical needs, is at enormous risk."  
17

18 43. October 8-9, 2007, Dr. Noel met with the Medical Director of the Nevada Department of  
19 Corrections, Defendant Dr. Robert Bannister. Dr. Noel discussed his findings with Defendant  
20 Bannister who agreed to implement most of Dr. Noel's treatment recommendations for the  
21 especially urgent cases, and further stated that he was planning follow-up care for several of  
22 those prisoners.  
23  
24

25 44. Defendant Bannister unreasonably failed to implement most of these urgent treatment  
26 recommendations, despite the obvious risks to the prisoners concerned. Defendant Skolnik was  
27 also made aware of these urgent treatment needs but failed to require meaningful corrective  
28

1 action.

2 45. The gross medical abuse at ESP is further exacerbated because Defendant McDaniel, the  
3 Warden at ESP, arbitrarily denies, delays and intentionally interferes with the medical decisions  
4 of ESP medical staff.  
5

6 46. On December 6, 2007, Defendants Gibbons, Miller, Cortez Masto and Skolnik received  
7 copies of the Noel Report.  
8

9 47. In response to the findings of the Noel Report, Defendants sent some of the seriously  
10 ill prisoners at ESP to High Desert Correctional Center ("High Desert") and allegedly hired a  
11 part-time local doctor to work at ESP.  
12

13 48. Recent reports from prisoners transferred to High Desert indicate that the prisoners are  
14 still not receiving adequate medical care at that facility.

15 49. Recent reports from prisoners remaining at ESP reveal that grossly inadequate medical  
16 care continues unabated at ESP and many medically fragile prisoners remain at the facility  
17 without access to necessary medical services.  
18

19 50. All Defendants are aware of the systemic deficiencies in the provision of medical services  
20 at ESP, have disregarded the excessive risks to prisoner health and safety caused by those  
21 deficiencies, and have deliberately failed to take reasonable and timely steps to prevent the likely  
22 risk of harm caused by those deficient medical services.  
23

24  
25 **IV. Exhaustion of Administrative Remedies.**

26 51. Plaintiffs have exhausted such administrative remedies as are available to them.  
27

28 **CLASS ACTION ALLEGATIONS**

1 52. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant  
2 to Fed. R. Civ. P. 23(a) and (b)(2).

3 53. Plaintiffs seek to represent a class consisting of “all prisoners who are now or will in the  
4 future be confined in Ely State Prison in Ely, Nevada” (hereinafter the “ESP Class”). As a result of  
5 their confinement at ESP, the Plaintiffs and the ESP Class have been, are, and will be subjected to  
6 violations of their constitutional rights as described in this Complaint. Plaintiffs represent a class  
7 of persons seeking declaratory and injunctive relief to eliminate or remedy Defendants’ policies,  
8 practices, acts, and omissions depriving them of those rights.  
9

10  
11 **The Named Plaintiffs**

12  
13 54. **Plaintiff David Riker** suffers from rheumatoid arthritis (RA) and fibromyalgia. These  
14 conditions cause debilitating and chronic pain. The California Department of Corrections, which  
15 had custody of Mr. Riker before his incarceration by NDOC, extensively documented his medical  
16 conditions including the treatment regimens which had proved effective to control his symptoms.  
17 Those treatment regimens were stopped when he came to ESP in 2005.  
18

19 55. When a doctor at NDOC’s Regional Medical Facility (RMF) reviewed Rikers’  
20 records and conditions in August of 2006 and prescribed appropriate medications and ordered x-  
21 rays, ESP medical staff did not follow her orders. Mr. Riker never received x-rays, and the  
22 medical staff at ESP did not implement the order for a dosage increase in his medication.  
23 Instead, the Physician’s Assistant at ESP, Max Carter, took him off the medications ordered by  
24 the RMF doctor and stated that Riker does not have rheumatoid arthritis, a condition previously  
25 treated and diagnosed by several Rheumatologists.  
26  
27  
28

1 56. Because Mr. Riker is not receiving adequate care for his RA, he suffers chronic and  
2 severe protopathic nerve pain. ESP medical staff have told him that treating chronic pain is  
3 against the policy of the prison. Such a policy or practice contradicts medical ethics and  
4 community standards of care in the State of Nevada. Medical staff do not provide him with pain  
5 medication. Instead, he was told he could buy ibuprofen from the prison store, a medicine which  
6 is completely inadequate for treating his chronic and severe nerve pain.  
7  
8

9 57. Mr. Riker takes or has taken several medications that require careful monitoring for  
10 possible side effects and complications, including Plaquinel and Methotrexate, but ESP medical  
11 staff fail to perform the regular testing required to ensure that Mr. Riker is not harmed by his  
12 medications.  
13

14 58. Mr. Riker's medical records also demonstrate that he is prescribed medication that is  
15 alternately stopped for no reason or the refills are not given on time so he is frequently forced to  
16 go without them. For example, he has been prescribed Propanolol for both migraines and blood  
17 pressure control and this medication is often discontinued suddenly. Propanolol is a beta blocker  
18 and if stopped abruptly can cause a heart attack.  
19  
20

21 59. Mr. Riker is not receiving adequate treatment for his serious medical conditions at ESP  
22 and he is at great risk of suffering and has suffered serious medical harm.  
23

24 60. **Plaintiff Roger Libby** has a right inguinal hernia. Mr. Libby suffers a great deal of pain  
25 and discomfort due to his hernia. The hernia is causing him problems with digestion and  
26 difficulty with bowel movements. Over time his condition has gotten worse and the hernia is  
27 now the size of a softball. The proper treatment for this condition is surgery if the patient can  
28

1 tolerate it.

2 61. Mr. Libby repeatedly requested surgery for his hernia, but Defendants have denied this  
3 medically necessary treatment. His medical records show no medical reason why Mr. Libby  
4 should not have a hernia operation.  
5

6 62. The only treatment Defendants have provided for the hernia is a truss, which is not good  
7 medical practice. It weakens the inguinal ring and musculature and over time makes the hernia  
8 worse.  
9

10 63. Mr. Libby is not receiving adequate treatment for his serious medical condition at ESP  
11 and he is at great risk of suffering and has suffered serious medical harm.  
12

13 64. **Plaintiff Terrence Brothers** suffered from untreated open sores on his scalp for  
14 approximately ten years at ESP. After years of requesting treatment without success, Mr.  
15 Brothers finally received a prescription shampoo that helped his condition in 2006. But due to  
16 the years of inadequate treatment, his scalp is permanently scarred, discolored and a large keloid  
17 formed on the back of his head. This keloid often swells, bleeds and is very painful. Despite  
18 repeated requests, Defendants still refuse to treat this condition.  
19  
20

21 65. Mr. Brothers is not receiving adequate treatment for his serious medical condition at ESP  
22 and he is at great risk of suffering and has suffered serious medical harm.  
23

24 66. **Plaintiff Jeffrey Hosmer** suffers from chronic severe back and neck pain and numbness  
25 on his left side. Despite repeated requests for care, Mr. Hosmer's condition is not being  
26 adequately treated. He frequently waits weeks or months to be seen by a doctor even though he  
27 is housed in ESP's infirmary.  
28



1 67. Mr. Hosmer's pain medication refills are often delayed for days or weeks at a time  
2 causing him to suffer excruciating pain.

3 68. Mr. Hosmer is bi-polar and his medications for that condition are frequently interrupted  
4 or discontinued thereby worsening his condition.

5 69. Mr. Hosmer is not receiving adequate treatment for his serious medical conditions at ESP  
6 and he is at great risk of suffering and has suffered serious medical harm.

7 70. **Plaintiff Mark Whittington** requires thyroid replacement therapy and he has suffered  
8 from chest and stomach pain and insomnia for months without adequate treatment despite  
9 repeated requests for care.

10 71. While incarcerated at ESP, Mr. Whittington has experienced continual problems with  
11 discontinued medications, dosages of prescribed medications running out, and on at least one  
12 occasion he was given the wrong medication by medical staff and suffered serious physical and  
13 mental side effects as a result.

14 72. Mr. Whittington is not receiving adequate treatment for his serious medical conditions at  
15 ESP and he is at great risk of suffering and has suffered serious medical harm.

16 73. The requirements of Rule 23(a) are met with regard to the putative class. Specifically:

- 17 a. There are currently over 1000 prisoners confined in ESP. The members of the  
18 class are too numerous, and the membership of the class too fluid, to permit  
19 joinder of all members.
- 20 b. Common questions of law and fact exist as to all class members. These common  
21 questions include, but are not limited to, whether the systemically inadequate

1 medical care provided to ESP prisoners violates their rights under the Eighth and  
2 Fourteenth Amendments to the United States Constitution.

3 c. The claims of the named plaintiffs are typical of those of the ESP Class as a  
4 whole. They do not have access to minimally adequate medical care at ESP and  
5 are subject to such grossly callous denial of basic medical care that every class  
6 member is either suffering from, or at great risk of suffering, agonizing pain,  
7 injury and potentially premature death.

8  
9  
10 d. Plaintiffs will fairly and adequately represent the interests of the class. The  
11 interests of the Plaintiffs are consistent with those of the class, and they are  
12 represented by counsel who are experienced in class action, civil rights, and  
13 prison conditions litigation.  
14

15 74. The further requirements of Rule 23(b)(2) are met in this cause in that at all times  
16 Defendants have acted and refused to act on grounds generally applicable to the class, thereby  
17 making appropriate final injunctive and declaratory relief with respect to the class as a whole.  
18

19 **CLAIM FOR RELIEF**  
20

21 **Eighth and Fourteenth Amendments to the U.S. Constitution and 42 U.S.C. § 1983**

22 75. Defendants' policies, practices, acts, and omissions place Plaintiffs and the ESP class at  
23 unreasonable, continuing and foreseeable risk of serious medical problems.  
24

25 76. Defendants have acted with deliberate indifference to Plaintiffs' and the ESP class's serious  
26 medical needs by implementing, sanctioning, approving, ratifying, or failing to remedy policies,  
27 practices, acts and omissions that deny, delay or intentionally interfere with medical treatment.  
28

1 77. Defendants' deliberate indifference to Plaintiffs' and the ESP class's serious medical needs  
2 puts Plaintiffs and the ESP class at substantial risk of injury, causes avoidable pain, mental suffering,  
3 and deterioration of their health, and in some cases it has resulted or may result in premature death.  
4 Defendants' conduct constitutes unnecessary and wanton infliction of pain on the Plaintiffs and the  
5 ESP class.  
6

7 78. Defendants' policies, practices, acts, and omissions evidence and constitute deliberate  
8 indifference to the serious medical needs of prisoners and violate the Cruel and Unusual  
9 Punishments Clause of the Eighth Amendment, made applicable to the States through the Fourteenth  
10 Amendment to the United States Constitution.  
11

12 79. As a proximate result of Defendants' unconstitutional policies, practices, acts and omissions,  
13 Plaintiffs and the ESP class have suffered and will continue to suffer immediate and irreparable  
14 injury, including physical, psychological and emotional injury and risk of death. Plaintiffs have no  
15 plain, adequate or complete remedy at law to address the wrongs described herein. The injunctive  
16 relief sought by Plaintiffs is necessary to prevent continued and further injury.  
17

18  
19 **PRAYER FOR RELIEF**  
20

21 WHEREFORE, Plaintiffs respectfully request that the Court:

- 22 1. Issue an order certifying this action to proceed as a class action pursuant to Rules  
23 23(a) and (b)(2) of the Federal Rules of Civil Procedure;  
24  
25 2. Issue a judgment declaring that the actions of Defendants described herein are  
26 unlawful and violate Plaintiffs' rights under the Constitution and laws of the United States;  
27  
28 3. Enjoin Defendants, their subordinates, agents, employees, and all others acting in

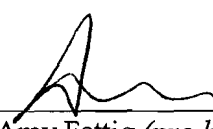
1 concert with them, from subjecting Plaintiffs to the conditions set forth in this Complaint;

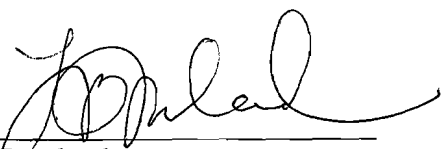
2 4. Grant Plaintiffs their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988  
3 and other applicable law; and  
4

5 5. Grant such other relief as the Court considers just and proper.

6  
7 Date: April <sup>16<sup>th</sup></sup> 2008

8 BY:

9  
10   
11 Amy Fettig (*pro hac vice pending*)<sup>1</sup>  
12 Margaret Winter (*pro hac vice pending*)  
13 THE NATIONAL PRISON PROJECT OF  
14 THE ACLU FOUNDATION, INC.  
15 915 15th Street, N.W., Seventh Floor  
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21 Lee Rowland  
22 ACLU of Nevada  
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27 rowland@aclunv.org

28 Allen Lichtenstein  
General Counsel, ACLU of Nevada  
NV Bar No. 3992

---

<sup>1</sup> Attorneys Winter, Fettig and Hanlon will comply with LR IA 10-2 within 45 days of the original filing of the Complaint in this matter.

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*Counsel for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

DAVID RIKER, ROGER LIBBY, TERRENCE BROTHERS, )  
JEFFREY HOSMER, MARK WHITTINGTON )

1 on their own behalf and on behalf of those )  
2 similarly situated, )

3 Plaintiffs, )

) Docket #: 3:08-CV-115-LRH-VPC

4 ) **CERTIFICATE OF SERVICE**  
5 )

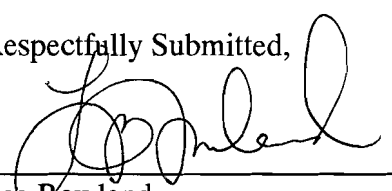
6 v. )  
7 )

8 JAMES GIBBONS, Governor of Nevada; ROSS MILLER, )  
9 Secretary of State of Nevada; CATHERINE CORTEZ )  
10 MASTO, Attorney General of Nevada; )  
11 HOWARD SKOLNIK, Director, Nevada Department )  
12 of Corrections; ROBERT BANNISTER, Medical Director, )  
13 Nevada Department of Corrections; and )  
14 E. K. MCDANIEL, Warden, Ely State Prison, )

15 Defendants. )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

15 Pursuant to Fed. Rule of Civ. Proc. 5(b), I hereby certify that on this 16th Day of April,  
16  
17 2008, I served a copy of the foregoing document, **Plaintiffs' Amended Class Action**  
18 **Complaint**, by electronic submission to the parties on electronic file in this case as follows:

19 Janet Traut  
20 Senior Deputy Attorney General  
21 Bureau of Public Affairs  
22 Public Safety Division  
23 100 No. Carson Street  
24 Carson City, NV 89701-4717

25 Respectfully Submitted, 

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27 Lee Rowland  
28 ACLU of Nevada  
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